THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.1309 of 2007

ORAL ORDER:

This writ petition is filed seeking a Certiorari to call for the records relating to and connected with the orders passed in I.A.No.557 of 2005 in I.D.No.292 of 2005 dated 19.6.2006 on the file of the Industrial Tribunal-cum-Labour Court, Anantapur and quash the same as arbitrary and illegal.

It appears, second respondent-workman raised a dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 before the Labour Court in I.D.No.292 of 2005 and the same is pending. While that being so, he also filed the present I.A.No.557 of 2005 purported to be under Section 11(d) of the I.D. Act seeking relief of full wages drawn at the time of unjustified order of dismissal passed by the society on 27.12.2002 pending decision in the I.D.

In the affidavit filed in support of the said I.A., it is stated that the dismissal order passed by the Management on 27.12.2002 is illegal. Neither any charge sheet nor any show cause notice was issued and abruptly he was dismissed from service without following principles of natural justice. No departmental enquiry has been conducted and he was also not paid subsistence allowance during the alleged suspension period, therefore, it amounts to unfair labour practice and victimization, hence, prayed for granting interim relief of wages from the date of dismissal.

The said I.A. was resisted by the Management by filing a counter/rejoinder stating that the respondent is not a workman within the meaning of Section 2(s) of the I.D. Act. He was working in managerial capacity, therefore, the I.D. itself is not maintainable.

The Labour Court, on the basis of the material available before it and the judgments referred to by either parties, gave a prima facie finding that the removal order passed against workman is ex-facie illegal and further held that in the counter filed by the management, nothing has been stated about the payment of any subsistence allowance, but removed the workman from service by a paper publication dated 29.12.2002 with effect from 27.12.2002. Though the management denied the plea of the respondent that he is a workman within the meaning of Section 2(s) of the I.D. Act stating that he was having all supervisory and such other powers, which do not come within the purview of Section 2(s) of the Act, but not filed any material before the Court. The plea of the management is not bonafide and pending enquiry relating to adjudication of the question of removal of workman from service, the status of the workman can be presumed to be as under suspension and accordingly he should be granted subsistence allowance from 12.8.2002. Aggrieved by the same, the present writ petition is filed.

The learned counsel for petitioner strenuously contended that the Labour Court lost sight off the fact that the respondent-workman was not an employee within the meaning of Section 2(s) of the Act and unless and until, a preliminary finding is recorded, granting relief does not arise.

Whereas, the learned counsel for respondent-workman strenuously contended that the removal order dated 27.12.2002 published in Vaartha newspaper on 29.12.2002 is ex-facie illegal and the Labour Court has not committed any error in recording a prima facie finding that the dismissal is illegal and directing payment of subsistence allowance from 12.8.2002 onwards, as such, no interference can be called into the impugned order passed by the

Labour Court.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

May be, the dismissal order passed dated 27.12.2002, which was published in Vaartha newspaper on 29.12.2002 is ex-facie illegal, but that is not the core issue for the purpose of deciding the I.A. The management has categorically asserted that the respondent is not a workman within the meaning of Section 2(s) of the I.D. Act. Merely because, the dismissal order is ex-facie illegal, it cannot be said that the I.D. is maintainable under Section 2-A(2) of the I.D. Act automatically without there being a categorical finding recorded by the Labour Court that the respondent is a workman within the meaning of Section 2(s) of the I.D. Act. It is unfortunate that the Labour Court held that the management has not filed any material before the Court to show that the respondent is not a workman within the meaning of Section 2(s) of the Act. I am of the opinion that whether the dismissal order is valid or not can be gone into only when a preliminary finding is recorded by the Labour Court that the respondent is a workman within the meaning of Section 2(s) of the Act and the dispute is maintainable, then only it can proceed with the matter either for the purpose of granting interim relief or passing final order in the main I.D. itself.

Under those circumstances, the writ petition is allowed and the impugned order is set aside and accordingly the I.A. is dismissed. The Labour Court is directed to take up the matter and frame the issue for adjudication as to whether the respondent is a workman within the meaning of Section 2(s) of the I.D. Act and then proceed with other issues simultaneously and dispose of the matter finally. No order as to costs.

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C.V.RAMULU,
J

Date: 13.7.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.1309 of 2007

13.7.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.1309 of 2007

Date: 13th July, 2007

Between:

Sri Kalahasti Cooperative Milk Supply Society Ltd., Srikalahasti, rep. by its Chair Person Kilaru Srinivasulu Naidu.

.. Petitioner

And

The Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur and another.

.. Respondents